

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

UNITED STATES OF AMERICA §  
Vs. § CRIMINAL ACTION 6:09CR3  
EMILIO MARTINEZ-MAGDALENA §

REPORT AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Court pursuant to 28 U.S.C. § 636(b)(3). This case has been referred by the Honorable Leonard Davis to the undersigned Magistrate Judge for the taking of a felony guilty plea. The parties have consented to the administration of guilty plea and Fed.R.Crim.P. 11 allocution by a United States Magistrate Judge.

On March 31, 2009, Defendant and counsel appeared before the undersigned, who addressed Defendant personally in open court and informed Defendant of, and determined that Defendant understood, the admonishments under Rule 11 of the Federal Rules of Criminal Procedure. Defendant pled guilty to Count 1 of the Indictment. After conducting the proceeding in the form and manner prescribed by Fed.R.Crim.P. 11, the undersigned finds:

1. Defendant, with the advice of his attorney, has consented orally and in writing to enter his guilty plea before a Magistrate Judge subject to final approval and sentencing by the presiding District Judge;
2. Defendant fully understands the nature of the charges and penalties;
3. There is no written plea agreement in this case;

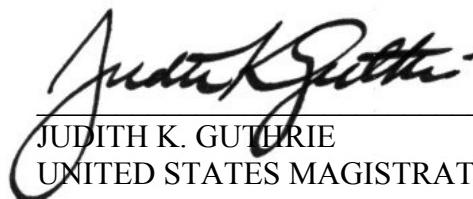
4. Defendant understands his constitutional and statutory rights and wishes to waive these rights, including the right to a trial by jury and the right to appear before a United States District Judge to enter this plea of guilty;
5. Defendant's plea is made freely and voluntarily;
6. Defendant is competent to enter this plea of guilty;
7. There is a factual basis for this plea; and
8. The ends of justice will be served by acceptance of Defendant's plea of guilty.

**Recommendation**

It is therefore **RECOMMENDED** that the District Judge accept the plea of guilty and enter a final judgment of guilty against Defendant.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this Report and Recommendation within ten days after being served with a copy thereof shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district judge. *Douglass v. United States Auto Ass'n*, 79 F.3d 1415, 1430 (5<sup>th</sup> Cir. 1996) (en banc).

So ORDERED and SIGNED this 31 day of March, 2009.



JUDITH K. GUTHRIE  
UNITED STATES MAGISTRATE JUDGE